D.B. CIVIL SPECIAL APPEAL (WRIT) NO.732/2004

[Gvoind Singh Choudhary Vs. State of Raj. & Ors.]

Date : 19.05.2006

PRESENT

HON'BLE JUSTICE MR. RAJESH BALIA
HON'BLE JUSTICE MR. R.P. VYAS

Mr. K.R. Choudhary for the appellant.
Mr. L.R. Upadhyay, Dy. Government Advocate.

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BY THE COURT : (PER HON'BLE MR. R. BALIA J.)

This appeal is directed against the judgment of learned Single Judge dated 4.10.2004 dismissing the writ petition in limine.

The appeal was admitted on 3.11.2004 and notices were served way back in July 2005. However, no reply to the writ petition has been submitted and when the matter came up before this Court on 22nd January, 2006, the time to file reply was allowed to the respondents. Again on 19.4.2006, four weeks' time was allowed and till now no reply has been filed. In these circumstances, we are constrained to decide the appeal on the basis of material that has been placed before us by the petitioner–

appellant and which has not been rebutted.

The short contention of the petitioner before the learned Single Judge had been that he was appointed as a Library Technician vide order dated 17.1.1995. He stated that because of the family circumstances, in year 1997 he could not join the duty thereafter. The petitioner had to appear before the Joint Commissioner in pursuance of direction issued by the Chief Medical and Health Officer, Barmer on 2.11.1998 but he did not appear on this date. He was referred to by letter dated 3.11.1998 to the Aditional Director (Administration), Medical and Health Services, Jaipur where the petitioner alleged to have appeared on 10.11.1998 in pursuance of letter dated 2.11.1998.

It further appears from the averments made in the petition and the documents placed before us that after 15th January, 1997, the petitioner had not appeared before any authority until November 1998 and when he reported back before the Chief Medical and Health Officer, Barmer, he did not allow him to join because his case was referred to the higher authority. Thereafter, the petitioner made representation on 30th October, 2003 before the Additional Director making request that he should be taken back on duty. However, no action has been taken.

The learned Single Judge opined that in the facts and circumstances of the case, no mandamous can be given to respondent to take the petitioner back on duty particularly keeping in view that even after letter dated 3.11.1998 the petitioner has not taken any action for joining his duty until 30th October, 2003. We are in agreement with the learned Single Judge.

In the aforesaid facts and circumstances of the case, it is not a case in which extra-ordinary jurisdiction ought to have been invoked for allowing the petitioner to further indulge in remaining voluntary absent for such a long period.

The appeal, therefore, fails and is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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